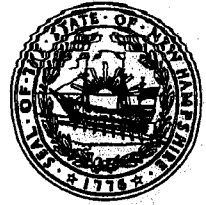




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

David and Cheryl Labrie
26 Bates Brook Road
Somersworth, NH 03878

Re: 26 Bates Brook Road
Somersworth, NH
Wetland Bureau File #2005-2072

ADMINISTRATIVE ORDER
No. WD 06-025

July 3, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to David and Cheryl Labrie, pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. David and Cheryl Labrie are individuals having a mailing address of 26 Bates Brook Road, Somersworth, NH 03878.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."

4. David and Cheryl Labrie are the owners of land located at 26 Tates Brook Road in Somersworth, more particularly described on the Somersworth Tax Map as Map D6 Lot 24-83 ("the Property").
5. On September 6, 2005, DES received a complaint of alleged unauthorized filling of freshwater wetlands at the Property.
6. On September 8, 2005, DES issued an Alleged Violator ("AV") letter to Mr. and Mrs. Labrie. The AV letter requested that Mr. and Mrs. Labrie voluntarily refrain from carrying out any additional work in jurisdiction until a review of the Property has been done.
7. On September 15, 2005, DES personnel conducted an inspection of the Property and found that approximately 10,000 square feet of wetlands had been filled on the Property.
8. On September 26, 2005, DES issued a Letter of Deficiency No. WET 2005-028 (the "LOD") to Mr. and Mrs. Labrie requesting that they perform the following:
 - a. Submit both an existing conditions plan and a restoration plan to restore approximately 10,000 square feet of wetland for review and approval by DES by October 26, 2005;
 - b. Retain a qualified wetland consultant to supervise and execute the requests of the LOD; and
 - c. Execute the restoration plan immediately upon receipt of the restoration plan approval from DES.
9. The LOD was received by Cheryl Labrie on September 27, 2005, as evidenced by the signed postal receipt and Track and Confirm sheet by the United States Postal Service.
10. On November 7, 2005, DES personnel contacted NH Soil Consultants, Inc., agent for Mr. and Mrs. Labrie, to inquire about the status of the wetland restoration plan. NH Soil Consultants, Inc. stated that no contract had been signed to date between Mr. and Mrs. Labrie and NH Soil Consultants, Inc.
11. On November 7, 2005, Mr. Labrie left a voice mail message with DES stating that he was working on the wetland restoration plan.
12. On November 30, 2005, DES personnel contacted Mr. and Mrs. Labrie and left a message inquiring on the status of the wetland restoration plan. DES did not receive a call back from Mr. and Mrs. Labrie.
13. On January 13, 2006, DES personnel contacted Mr. and Mrs. Labrie and left a message inquiring on the status of the wetland restoration plan. Mr. Labrie left a voice mail message with DES stating that he was working on the wetland restoration plan.

14. Review of DES records show that no permit was issued under RSA 482-A:3 to Mr. and Mrs. Labrie for the work observed on the Property.

15. Mr. and Mrs. Labrie have not met any of the voluntary deadlines set out in the LOD.

D. DETERMINATIONS

1. David and Cheryl Labrie have violated RSA 482-A, I by filling approximately 10,000 square feet of wetlands on the Property without a permit.

E. ORDER

Based on the above findings, DES hereby orders David and Cheryl Labrie as follows:

1. **By August 1, 2006**, submit a wetlands restoration plan to the DES Wetland Bureau for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and include provisions for restoration of the wetland and surface waters impacted by activities at the Property. The following shall be submitted with the restoration plan:

- a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions and jurisdictional impacts on the sites, with delineated jurisdictional wetland boundaries, and land topography; and
 - ii. proposed conditions after reestablishing the jurisdictional areas;
- b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
- c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration areas;
- d. A description of the proposed construction sequence, equipment, methods for accomplishing restoration and anticipated restoration compliance date; and
- e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum, an initial monitoring report documenting that restoration has been completed and monitoring progress reports for three successive growing seasons following completion of the restoration project. These reports should be submitted to DES by September 1, 2007, September 1, 2008, and September 1, 2009 respectively.

2. **Implement** the restoration plans proposed in accordance with Item E.1 above only after receiving written approval, and as conditioned, by DES.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

David Price, Compliance Investigator
DES Water Division
50 International Drive
Suite 200
Portsmouth, NH 03801
Fax: (603) 559-1510
e-mail: dprice@des.state.nh.us

F. APPEAL

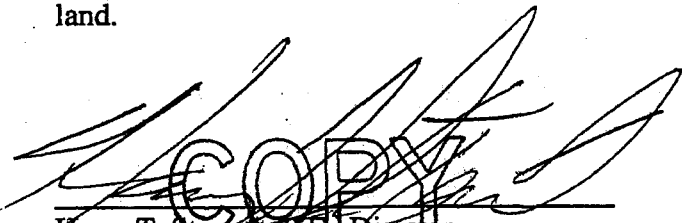
Any person aggrieved by this Order may request that DES reconsider the Order within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Filing an appeal or motion for reconsideration of the Order will not automatically relieve Mr. and Mrs. Labrie of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A:13 and 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Mr. And Mrs. Labrie remain obligated to comply with all applicable requirements. DES will continue to monitor Mr. And Mrs. Labrie's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Strafford County Registry of Deeds so as to run with the land.



COPY

Harry T. Stewart, P.E., Director
Water Division



COPY

Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7006 0100 0005 8153 5283

ec: Public Information Officer, DES PIP Office

Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB

Tracey Boisvert, DES Wetlands Bureau

Dori Wiggin, DES Wetlands Bureau

David Price, DES Wetlands Bureau

cc: Gretchen Hamel, Legal Unit Administrator

United States Army Corps of Engineers, Regulatory Office New England District

Somersworth Planning Board

Somersworth Conservation Commission

Somersworth City Engineer

Somersworth Code Enforcement

NH Soil Consultants, Inc.

Berry Survey & Engineering